

District of Columbia Court of Appeals

No. M-230-07

NOTICE

(FILED - JULY 12, 2007)

The District of Columbia Court of Appeals proposes to make substantial changes to D.C. Bar Rule XI, the rule which governs disciplinary proceedings for attorneys subject to the disciplinary jurisdiction of the Court. The proposed changes stem from recommendations made by the Board of Governors of the District of Columbia Bar, following consideration of existing Rule XI by a Disciplinary System Study Committee chaired by John Payton, Esquire. The purpose of this Notice is to give interested persons an opportunity to comment on the changes to Rule XI proposed by the Court.

At the outset, the Court expresses its deep gratitude to the Bar, and the Disciplinary System Study Committee in particular, for its exhaustive and fruitful work in identifying problems associated with the disciplinary process as it presently operates and recommending changes to improve it. Although the changes which the Court proposes deviate in some respects from the Committee's recommendations, the Court has been aided enormously by the Committee's painstaking identification of problem areas and creative suggestions for improvement.

In this Notice, the proposed rule changes appear in two formats, both of which are available on the D.C. Court of Appeals' website at www.dcappeals.gov. The first is a compare-version in which proposed additions to the affected sections of present Rule XI are shown in bold type, while deletions from those sections are lined through. The second format is a "clean" version of the sections affected, showing them as they will appear if the proposed changes are adopted. The following is a brief synopsis of the key changes the Court proposes to make to the present rule:

1. Rule XI, § 3 as revised would permit the Court to suspend temporarily an attorney who, in the course of an investigation by Bar Counsel, has failed to respond to a compliance order of the Board on Professional Responsibility (the Board) in a matter where Bar Counsel's investigation involves allegations of serious misconduct, as defined.

2. Rule XI, § 8 as revised would provide that if an attorney, after notice, fails to respond to a petition initiating disciplinary proceedings, the Chairperson of the Hearing Committee assigned the petition may enter an order of default which deems the petition admitted subject to *ex parte* proof by Bar Counsel sufficient to prove the allegations by clear and convincing evidence. The attorney would be relieved of the default under specified conditions.

3. Rule XI, § 9 as revised would require the Court, upon receipt of a recommendation by the Board to disbar an attorney or suspend an attorney for more than one year, to suspend the attorney from the practice of law pending final action by the

Court on the Board's recommendation, unless the attorney, in response to a show cause order, demonstrates a substantial likelihood of success with respect to exceptions the attorney has taken to the Board's recommendation.

4. Rule XI, § 11 as revised would remove the Board from a mandatory role in the imposition of reciprocal discipline and instead permit the Court, with important assistance of Bar Counsel (and, where necessary, the Board), to impose reciprocal discipline on an attorney who fails to show cause why discipline ordered by another disciplining court should not be ordered reciprocally in this jurisdiction.

5. Under proposed new Rule XI, § 12.1, an attorney who is the subject of an investigation or a pending proceeding before a Hearing Committee, with the agreement of Bar Counsel, would be permitted to consent to discipline (other than disbarment, covered by Rule XI, § 12) at any time before the Hearing Committee has submitted its report to the Board on the underlying petition for discipline, subject to limitations and procedures spelled out in the new section. The consent discipline could not entail any promise by Bar Counsel to dismiss charges previously brought or to forgo charges not yet brought, and would require acknowledgment by the attorney (*inter alia*) of the truth of the facts comprising the misconduct set forth in the consent petition. Consent to discipline would not be available (a) in investigations presenting matters of first impression on legal issues or (b) unless the agreed-upon sanction is within the range of discipline ordinarily imposed for similar misconduct.

6. Rule XI, § 16 as revised would remove the Board from a mandatory role in regard to petitions for reinstatement by attorneys who have been disbarred or required to prove rehabilitation in order to be reinstated. Instead, in cases where Bar Counsel opposes a petition for reinstatement, the Court would decide the petition upon receipt of a report and recommendation of a Hearing Committee following a hearing. In cases where Bar Counsel does not oppose reinstatement, the Court would decide the petition upon receipt of a report from Bar Counsel stating why, in Bar Counsel's judgment, the attorney meets the criteria for reinstatement.

7. New Rule XI, § 17 (f) would permit Bar Counsel, upon order of the Board for good cause shown and on appropriate conditions, to communicate information about any disciplinary matter to law enforcement agencies, the Committee on Admissions, the Committee on Unauthorized Practice, the Clients' Security Trust Fund, or a state or federal attorney disciplinary agency, board, or committee that has a legitimate interest in such a matter.

8. Rule XI, § 19 as revised would extend the immunity currently provided to members of the Board and Hearing Committees, Bar Counsel, and others to include also persons (and their assistants and employees) who engage in counseling, evaluating, or monitoring other attorneys pursuant to a Board or a Court order or a diversion agreement.

Ten copies of any comments to the proposed changes to Rule XI should be submitted to the Clerk, D.C. Court of Appeals, 500 Indiana Avenue, N.W., Sixth Floor, no later than October 19, 2007. All comments submitted pursuant to this Notice will be available to the public.